UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

PHILLIPS 66,	)	
	)	
Respondent,	)	
	)	
and	)	**CONSOLIDATED**
	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (USW), AFL-CIO/CLC	)	Case Nos. 31-CA-085243 & 31-CA-096709
	)	
Charging Party.	)	

BRIEF IN SUPPORT OF EXCEPTIONS OF UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

Pursuant to the National Labor Relations Board's Rules and Regulations 102.46, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC ("Union") has filed cross-exceptions to the rulings and relief granted by Administrative Law Judge Lisa D. Thompson, as set forth in her November 25, 2014 recommended decision and order, JD(SF)-56-14 (cited as "JD.") The cross-exceptions should be allowed:

I. THE ALJ'S FAILURE TO REQUIRE THAT UNLAWFUL, UNILATERALLY IMPLEMENTED TERMS OF EMPLOYMENT BE RESCINDED AND THAT THE STATUS QUO ANTE BE RESTORED

The ALJ declined to require as a remedy that Respondent be required to rescind the changes to terms and conditions of employment which it unilaterally implemented on December 10, 2012, and restore the *status quo ante*. JD at 37. This remedy is standard Board policy in refusal to bargain cases. *Beacon Journal Publ'g Co. v. NLRB*, 401 F.2d 366 (6th Cir. 1968) and 417 F.2d 1060 (6th Cir. 1969); *Dorsey Trailers, Inc.,* 327 NLRB 835 (1999); *General Tel. Co. of Fla*., 144 NLRB 331 (1963), *enforced as modified*, 337 F.2d 452 (5th Cir. 1964); *American Lubricants Co*., 136 NLRB 946, 947-48 (1962); *Atlas Tack Corp*., 226 NLRB 222 (1976), *enforced* 599 F.2d 1201 (1st Cir. 1977). In particular, where an employer has committed both 8(a)(3) and 8(a)(5) violations, as here, an order rescinding the unilateral change is appropriate. In *Dorsey Trailers, Inc.,* 327 NLRB 835, 864 (1999), an employer violated Sections 8(a)(3) and (5) in closing and transferring bargaining unit work to a different facility without affording the union an opportunity to bargain. As a remedy, the Board required both that the employer "reopen" its operation "as it was" prior to the unlawful change and bargain with the union. 327 NLRB at 865. The employer was also ordered to offer reinstatement to employees to their former positions and make them whole. *Id.* This standard remedy is necessary in order to ensure the Union's ability to bargain under circumstances which are free from coercion and unlawful conduct. We note that the ALJ's recommended order directs the Company to offer affected employees reinstatement to their former positions "*or, if that job no longer exists, to a substantially equivalent position.*" JD at 37 (emphasis added). As a result of the Company's unlawful conduct here, three of the HSS positions no longer exist and the other two positions only exist with substantially reduced job duties. The employer's unlawful conduct has

eliminated these positions. Thus, in the absence of an affirmative order to rescind the unlawful changes and restore the pre-existing terms of employment, the Union's ability to bargain, and vindication of the Act, will be frustrated. Moreover, as of this writing, one affected employee has already left employment so that an offer of reinstatement, if not accepted, will leave the union to bargain under circumstances in which the number of bargaining unit positions has been unlawfully reduced. "It is well settled that the real harm in an employer's unilateral implementation of terms and conditions of employment is to the union's status as bargaining representative, in effect undermining the union in the eyes of the employees." *Page Litho, Inc.*, 311 NLRB 881 (1993), enf'd, 150 LRRM 2192 (6th Cir. 1995). The Charging Party specifically requested this remedy in its brief to the ALJ, "because in the absence of finding a violation under Section 8(a)(5), the Board will lack authority to restore and remedy the bargaining which has resulted in a declaration of impasse and unilateral implementation of discriminatory terms and conditions of employment. Full remedy (in addition to the make whole remedies available under Section 8(a)(3)) thus depends on an evaluation of conduct under Section 8(a)(5)." Charging Party Brief at 29, n.6.

The Board should require this standard remedy.

II. THE ALJ'S FAILURE TO REQUIRE THAT NOTICE TO EMPLOYEES BE READ AT A MANDATORY MEETING

The ALJ declined to require as a remedy that the notice to employees of the violations be read to employees at a mandatory meeting during working hours. JD at 35, L43-45. This finding is contrary to the record evidence and contrary to established precedent. *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995). Moreover, the Company's violations are serious, involving dramatic reductions in pay and alteration in terms and conditions of employment. In particular, the ALJ

found that pay reductions for some employees amounted to $20,000 - $26,000 per year per employee. JD18. Three were reassigned to entry level production jobs and the two remaining employees were stripped of their most important job responsibilities, including incident commander, incident owner and EMT duties. *Id.* Reading the notice during working hours of this relatively small workplace will not be difficult or burdensome and will ensure that employees are fully informed that the Company intends to remedy its unlawful conduct. The Board should require this additional remedy. .

III. Conclusion

For the foregoing reasons, the Union's cross-exceptions should be allowed.

Dated: March 6, 2015

Respectfully submitted,

By: /s/ Joseph P. Stuligross

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CERTIFICATE OF SERVICE

RE: PHILLIPS 66

CASES 31-CA-085243, 31-CA-096709

The undersigned counsel for Attorneys for Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO/CLC, hereby certifies that he caused a true and correct copy of the foregoing **BRIEF IN SUPPORT OF EXCEPTIONS OF UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** to be served upon the following counsel of record on this 6th day of March, 2015, by electronic mail and U.S. Mail:

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